

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WASHINGTON FEDERAL, *et al.*,

Plaintiffs,

V.

THE UNITED STATES,

Defendant.

No. 13-385C
(Chief Judge Sweeney)

FAIRHOLME FUNDS, INC., *et al.*,

Plaintiffs,

V.

THE UNITED STATES,

Defendant.

No. 13-465C
(Chief Judge Sweeney)

**Additional plaintiffs on following pages*

**DEFENDANT’S NOTICE IDENTIFYING CLAIMS ADDRESSED
IN ITS REPLY IN SUPPORT OF ITS OMNIBUS MOTION TO DISMISS**

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May 6, 2019

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JOSEPH CACCIAPALLE, *et al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

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)
) No. 13-466C
) (Chief Judge Sweeney)
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)

BRYNDON FISHER, *et al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

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)
) No. 13-608C
) (Chief Judge Sweeney)
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ARROWOOD INDEMNITY
COMPANY, *et al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

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) No. 13-698C
) (Chief Judge Sweeney)
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)

BRUCE REID, *et al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

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) No. 14-152C
) (Chief Judge Sweeney)
)
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)

LOUISE RAFTER, *et al.*,

Plaintiffs,

V.

THE UNITED STATES,

Defendant.

No. 14-740C
(Chief Judge Sweeney)

OWL CREEK ASIA I, L.P., *et al.*,

Plaintiffs,

V.

THE UNITED STATES,

Defendant.

No. 18-281C
(Chief Judge Sweeney)

AKANTHOS OPPORTUNITY MASTER
FUND, L.P.,

Plaintiff,

V.

THE UNITED STATES,

Defendant.

No. 18-369C
(Chief Judge Sweeney)

APPALOOSA INVESTMENT LIMITED
PARTNERSHIP I, *et al.*,

Plaintiff,

V.

THE UNITED STATES,

Defendant.

No. 18-370C
(Chief Judge Sweeney)

CSS, LLC,)	
)	
Plaintiffs,)	No. 18-371C
)	(Chief Judge Sweeney)
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	
)	
MASON CAPITAL L.P., <i>et al.</i> ,)	
)	
Plaintiff,)	No. 18-529C
)	(Chief Judge Sweeney)
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	
)	

GLOSSARY

Complaints

Akanthos	First Am. Compl., <i>Akanthos Opportunity Master Fund L.P. v. United States</i> , No. 18-369 (Fed. Cl. Aug. 16, 2018), ECF No. 14.
Appaloosa	Second Am. Compl., <i>Appaloosa Inv. Ltd. P'Ship I v. United States</i> , No. 18-370 (Fed. Cl. Aug. 16, 2018), ECF No. 17.
Arrowood	Second Am. Compl., <i>Arrowood Indemn. Co. v. United States</i> , No. 13-698 (Fed. Cl. Sept. 17, 2018), ECF No. 44.
Cacciapalle	Am. Consol. Class Action Compl., <i>Cacciapalle v. United States</i> , No. 13-466 (Fed. Cl. Mar. 8, 2018), ECF No. 67.
CSS	First Am. Compl., <i>CSS, LLC v. United States</i> , No. 18-371 (Fed. Cl. Aug. 16, 2018), ECF No. 14.
Fairholme	Second Am. Compl., <i>Fairholme Funds, Inc. v. United States</i> , No. 13-465 (Fed. Cl. Aug. 3, 2018), ECF No. 413.
Fisher	Second Am. Derivative Compl., <i>Fisher v. United States</i> , No. 13-608 (Fed. Cl. Mar. 8, 2018), ECF No. 36.
Mason	First Am. Compl., <i>Mason Cap. L.P. v. United States</i> , No. 18-529 (Fed. Cl. Aug. 16, 2018), ECF No. 14.
Owl Creek	First. Am. Compl., <i>Owl Creek Asia I, L.P. v. United States</i> , No. 18-281 (Fed. Cl. Aug. 16, 2018), ECF No. 16.
Rafter	Second Am. Verified Compl., <i>Rafter v. United States</i> , No. 14-740 (Fed. Cl. Mar. 8, 2018), ECF No. 25.
Reid	Am. Derivative Compl., <i>Reid v. United States</i> , No. 14-152 (Fed. Cl. Mar. 8, 2018), ECF No. 22.
WF	Am. Compl., <i>Washington Federal v. United States</i> , No. 13-385 (Fed. Cl. Mar. 8, 2018), ECF No. 57.

DEFENDANT’S NOTICE IDENTIFYING CLAIMS ADDRESSED
IN ITS REPLY IN SUPPORT OF ITS OMNIBUS MOTION TO DISMISS

Pursuant to the Court’s Order, dated January 30, 2019 (ECF No. 432), defendant, the United States, respectfully submits this notice identifying which claims are the subject of each argument in its reply in support of its omnibus motion to dismiss.

I. The Court Lacks Jurisdiction Because Plaintiffs’ Third Amendment Claims Are Not Claims Against The United States

- Akanthos – Counts I-IV
- Appaloosa – Counts I-IV
- Arrowood – Counts I-IV
- Cacciapalle – Counts I-VI
- CSS – Counts I-IV
- Fairholme – Counts I-XII
- Fisher – Counts I-III
- Mason – Counts I-IV
- Owl Creek – Counts I-IV
- Rafter – Counts I-VII
- Reid – Counts I-III

II. HERA’s Succession Clause Bars Plaintiffs’ Derivative Claims Against The United States

- Akanthos – Counts I-IV
- Appaloosa – Counts I-IV
- Arrowood – Counts I-IV
- Cacciapalle – Counts I-VI
- CSS – Counts I-IV
- Fairholme – Counts I-XII
- Fisher – Counts I-III
- Mason – Counts I-IV
- Owl Creek – Counts I-IV
- Rafter – Counts I-VII
- Reid – Counts I-III
- WF – Count I¹

¹ Although WF styles its first count as “Count One,” spelling out the numeral “one,” for consistency we are using Roman numerals and refer to WF’s single claim as “Count I” herein.

III. This Court Does Not Possess Jurisdiction To Entertain Plaintiffs' Allegedly Direct Contract Claims Because There Is No Contract Between Plaintiffs And The United States

- Akanthos – Count IV
- Appaloosa – Count IV
- Arrowood – Count IV
- Cacciapalle – Counts IV-V
- CSS – Count IV
- Fairholme – Counts X-XII
- Mason – Count IV
- Owl Creek – Count IV
- Rafter –Counts IV-VII

IV. The Tucker Act Does Not Permit Plaintiffs To Pursue Claims That Sound In Tort

- Akanthos – Counts I-III
- Appaloosa – Counts I-III
- Arrowood – Counts I-III
- Cacciapalle – Counts I-III and VI
- CSS – Counts I-III
- Fairholme – Counts I-IX
- Fisher – Counts I-III
- Mason – Counts I-III
- Owl Creek – Counts I-III
- Rafter – Counts I-III
- Reid – Counts I-III
- WF – Count I

V. Shareholders That Purchased Enterprise Stock After The Third Amendment Lack Standing To Pursue Their Takings Claims

- Fairholme – Counts I-XII²
- Rafter – Counts I-VII³

VI. Under 28 U.S.C. § 1500, The Court Lacks Jurisdiction To Entertain The *Fairholme*, *Cacciapalle*, And *Arrowood* Complaints

- Arrowood – Counts I-IV
- Cacciapalle – Counts I-VI
- Fairholme – Counts I-XII

² As to all plaintiffs except Berkley Insurance Company.

³ As to all plaintiffs except Louise Rafter, and Josephine and Stephen Rattien.

VII. Plaintiffs Fail To State A Plausible Takings Claim

- Akanthos – Count I
- Appaloosa – Count I
- Arrowood – Count I
- Cacciapalle – Counts I-II
- CSS – Count I
- Fairholme – Counts I-III
- Fisher – Count I
- Mason – Count I
- Owl Creek – Count I
- Rafter – Counts I-II
- Reid – Count I
- WF – Count I

VIII. Plaintiffs Fail To State A Plausible Illegal Exaction Claim

- Akanthos – Count II
- Appaloosa – Count II
- Arrowood – Count II
- Cacciapalle – Count III
- CSS – Count II
- Fairholme – Counts IV-VI
- Fisher – Count II
- Mason – Count II
- Owl Creek – Count II
- Rafter – Count III
- Reid – Count II
- WF – Count I

IX. Plaintiffs Fail To State A Plausible Claim For Breach Of Fiduciary Duty

- Akanthos – Count III
- Appaloosa – Count III
- Arrowood – Count III
- Cacciapalle – Count VI
- CSS – Count III
- Fairholme – Counts VII-IX
- Fisher – Count III
- Mason – Count III
- Owl Creek – Count III
- Reid – Count III

X. Plaintiffs Fail To State A Plausible Breach of Contract Claim

- Akanthos – Count IV
- Appaloosa – Count IV
- Arrowood – Count IV
- Cacciapalle – Counts IV and V
- CSS – Count IV
- Fairholme – Counts X-XII
- Mason – Count IV
- Owl Creek – Count IV
- Rafter—Counts IV-VII

XI. The *Washington Federal* Plaintiffs Cannot Challenge The Appointment Of A Conservator Under The Guise Of A Takings Or Illegal Exaction Claim

- WF – Count I

Respectfully submitted,

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May 6, 2019

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